



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

September 16, 2003

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2003-6491

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187720.

The City of League City (the "city"), which you represent, received a request for "all records of accidents and incidents regarding [a named individual]." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. You also notified the named individual of this request for information and of her right to submit comments to this office as to why the requested information should not be released.¹ As of the date of this decision, we have received no correspondence from the individual whom you notified. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile criminal history information that pertains to a specific individual, the

¹See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

compiled information takes on a character that implicates that individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

In this instance, the requestor seeks access to unspecified records of accidents or incidents involving a named individual. Thus, this request for information implicates that individual's right to privacy. You believe that the requestor may have a special right of access to any private information that involves the named individual. We note, however, that the requestor is not the individual named in the request for information. Furthermore, you do not inform us, and it does not otherwise appear to this office, that the requestor is the named individual's authorized representative. *See* Gov't Code § 552.023(a).² We therefore conclude that, to the extent that the city maintains any information that relates to the named individual as a suspect, arrested person, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Common-law privacy under section 552.101 also protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). You believe that certain identifying information in one of the submitted documents may be protected by common-law privacy. We conclude, however, that the information in question is not excepted from disclosure under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information that another statute makes confidential. You claim that some of the submitted information is confidential under section 261.201 of the Family Code. Chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in part:

²Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that section 261.201(a) is applicable to some of the submitted information, which we have marked. *See also* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor). You do not inform this office of any rule adopted by the city that would allow the release of the marked information in this instance. We therefore assume that no such rule exists. Given that assumption, we conclude that the marked information must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.³

Section 552.130 of the Government Code excepts from required public disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). Information that relates to a Texas driver’s license must be withheld from the public under section 552.130. We have marked what appears to be Texas driver’s license information. If the marked information relates to a Texas driver’s license, then the city must withhold that information under section 552.130. We note that the requestor has a special right of access to his own Texas driver’s license number under section 552.023, and therefore that information may not be withheld from the requestor under section 552.130.⁴

In summary, any information maintained by the city that relates to the named individual as a suspect, arrested person, or criminal defendant must be withheld from disclosure under section 552.101 of the Government Code in conjunction with *Reporters Committee*. The marked information that is confidential under section 261.201 of the Family Code must be

³We note that a parent or other legal representative of a victim of alleged child abuse or neglect may be entitled to obtain portions of the requested information from the Texas Department of Protective and Regulatory Services. *See* Fam. Code § 261.201(g).

⁴*See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning himself).

withheld under section 552.101. Texas driver's license information, with the exception of the requestor's Texas driver's license number, must be withheld under section 552.130. The requestor has a right of access to his own Texas driver's license number under section 552.023. The rest of the submitted information is not excepted from public disclosure and must also be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

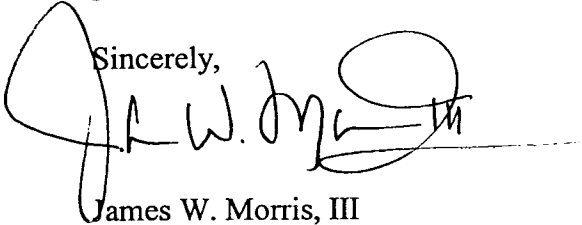
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III", with a large, stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 187720

Enc: Submitted documents

c: Mr. Manuel Requenes
417 28th Avenue North
Texas City, Texas 77590
(w/o enclosures)